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Rural America's Cooperative Bank

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SENT VIA FEDEX and E-MAIL (reg-comm@fca.gov)

Mr. Gary K. Van Meter, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102-5090

Dear Mr. Van Meter:

Re: Statement on Regulatory Burden

Dear Mr. Van Meter:

We appreciate this opportunity to comment on the Statement of Regulatory Burden as published June 23, 2008 in the Federal Register at 73 FR 35361 ("Statement"). As you know, CoBank is supportive of periodic efforts by the Farm Credit Administration to solicit input from System institutions and others on regulations that may duplicate other requirements, are ineffective, or impose burdens that are greater than the benefits received. We believe that your approach in this Statement to target regulations from six Parts of the FCA regulations, rather than to open the opportunity for all regulations, is more practical and allows a more focused review of the identified regulations.

We list below existing FCA regulations which fall within the scope of FCA's request and/or which need to be clarified to enhance their effectiveness. We are always available to provide more detail on these comments and to answer FCA's questions, if any.

1. Section 614.4325—Purchase and Sales of Interests in Loans

- Amend the definition of "interests in loans" to make clear that it includes not only whole loans, but participation interests in loans as well. There are other interests in loans beyond participation interests, and both types of interests qualify as "interests in loans".

- Consider adding a provision comparable to (h) (Transactions through agents), that explicitly authorizes sales of loans, including participations, through the use of agents as well. FCA has expressly allowed agency relationships within the System where one System institution performs various functions (e.g. underwriting and approval) as agent for a second originating System institution if the loan is designated for sale to the agent and as long as they are based on standards set forth in board policies and in agreements between the two System institutions.

2. Section 614.4330(b)—Loan Participations

- If Section 4335 (see below) is revised regarding elimination of the minimum stock purchase requirement for loans designated at closing for sale of either a 100% whole loan or a 100% participation interest, then subsection (b) should be revised to add after "and stock purchase requirements of the originating lender" the words ", if applicable under the terms of the originating lender's bylaws, as provided in Section. 614.4335."

3. Section 614.4335—Borrower Stock Requirements

- While this section is intended to apply to participation certificates as well as stock, the section should be made explicit in this regard.
- This regulation should be amended to address the stock purchase requirement that impacts loans designated at closing for sale (either a 100% whole loan or a 100% participation interest, including loans closed under an agency agreement under which the FCS agent would purchase a 100% participation or whole loan immediately after loan closing). This regulation should be amended to permit bylaws to provide that the minimum stock purchase requirement shall not apply to these types of transactions (similarly to how secondary market sales are addressed in subsection (b)). This would address the administrative burden of requiring a $1,000 purchase of an originating lender's equity by customers whose only contact with the originating lender thereafter will be minimal or non-existent.

4. Section 614.4337—Disclosure to Borrowers

- Amend subsection (a) to permit the disclosure to be made by the purchasing institution with the written consent of the selling institution.
- In the alternative, require that the selling institution copy the purchasing institution on its disclosure to the borrower to ensure that the purchasing institution can meet its obligations under (b).

5. Part 614.4550—Place of discount.

Section 614.4550 prohibits a Farm Credit bank ("Bank A" for purposes of this illustration) from funding an OFI either headquartered or doing a majority of eligible business in the chartered Title I territory of another Farm Credit bank ("Bank B") unless Bank A notifies Bank B within 5 days of the OFI's application. The apparent purpose of this restriction is to give Bank B, being "closer to home" for the OFI, an opportunity to contact the OFI and seek its business. However, the language seems to say that, if Bank A is so much as one day late in giving the required notice, it is forever barred from funding the OFI, even if Bank B does not enter into a funding relationship with the OFI. This seems unnecessarily restrictive. In addition, it is not always clear when an "application" is received for purposes of this rule, as "applications" may be received in stages, withdrawn, resubmitted later, etc. This could result in a dispute between Bank A and Bank B as to whether the notice was properly and timely given.

We would suggest that a fairer and much more workable standard would be simply to state that Bank A may not enter into a funding relationship with the OFI until 45 days after it has notified Bank B of its intent to commence funding. This provides Bank B with ample opportunity to contact the OFI and seek its business but does not create a very short deadline that, if missed, results in a permanent ban.

In addition, we see no need for a regulatory prohibition on two Farm Credit banks simultaneously funding the same OFI. It is very common for a commercial borrower to have more than one lender. Normally, the "primary" lender controls the ability of the borrower to obtain additional credit elsewhere through negative covenants in the loan documents. When exceptions are granted, they are usually conditioned upon acceptable intercreditor arrangements being made. This is a routine part of commercial finance, and we see no need or statutory basis for the funding of OFIs to be any different.

CoBank's suggested changes to Section 614.4550 are therefore as follows:

> **§614.4550 Place of discount.**
>
> A Farm Credit Bank or agricultural credit bank may provide funding, discounting, or other similar financial assistance to any OFI applicant. However, a Farm Credit Bank or agricultural credit bank cannot fund, discount, or extend other similar financial assistance to an OFI that maintains its headquarters, or has more than 50 percent of its outstanding loan volume to eligible borrowers who conduct agricultural or aquatic operations in the chartered territory of another Farm Credit bank ~~unless~~ until 45 calendar days after it notifies such bank in writing ~~within five (5) business days of receiving the OFI's application for financing~~ of its intent to begin funding, discounting, or extending similar financial assistance to the OFI. ~~Two or more Farm Credit banks cannot simultaneously fund the same OFI.~~

6. Section 616.6700 Stock purchase requirements

Section 616.6700(a) correctly acknowledges that the Farm Credit Leasing Services Corporation (FCL) is not subject to stock purchase requirements. FCL is now wholly-owned by CoBank, and CoBank has periodically considered other structures for FCL, which could include the dissolution of FCL as a separate corporate entity, with all of its assets being transferred to CoBank. Under that approach, CoBank would then continue the leasing operations as a separate business unit (division) of CoBank rather than as a separate legal entity. This would result in a much more efficient and lower-cost leasing operation. However, the resulting application of the stock purchase requirements would be very problematic because of the large number of FCL customers nationwide and the potential governance issues that could result if those customers were required to hold common equity interests, voting or non-voting, in CoBank or another System institution.

We would recommend the following change to Section 616.6700(a), which would maintain the current approach for any legal successor to FCL.

(a) Each System institution, except the Farm Credit Leasing Services Corporation (or its legal successor, upon merger or dissolution of Farm Credit Leasing Services Corporation), making an equipment lease under titles II or III of the Act must require the lessee to buy or own at least one share of stock or one participation certificate in the institution making the lease, in accordance with its bylaws.

7. Section 618.8320—Data regarding borrowers and loan applicants

As FCA is aware, the Farm Credit System Banks have requested CoBank to collect information regarding System loan exposure to the 10 largest System borrowers and to share the names of the largest exposures with the other System Banks. This activity by System institutions is in an effort to identify the System's largest loans and allows the System to better administer its largest loans keeping in mind lending limits and prudent risk practices. While System institutions believe that this activity is authorized under Section 618.8320(b)(4), we would encourage FCA to amend that section by adding ", administration" after "extension of credit".

8. Section 618.8330(b)—Production of documents and testimony during litigation

As a practical matter for CoBank, we routinely receive subpoenas pursuant to litigation not signed by judges. CoBank then has to explain to the attorney requesting the information that we are governed by the regulation and that we can respond only if a judge signs the order. We provide a form, the attorney presents it to the judge who signs it, the attorney sends it to us and we disclose the documents. In the last 20 years, we do not recall a variation from this pattern. Moreover, we have never seen a request that was other than legitimate relating to litigation (as opposed to an unscrupulous attempt to discover confidential information).

We respectfully request that FCA amend the regulation to permit disclosure upon the issuance of an administrative subpoena with the proviso that the Farm Credit System institution may insist on a judge's order if there is reason to believe that the request is inappropriate under the circumstances.

Again, CoBank appreciates the opportunity to provide this input on the Statement. We know that FCA recognizes that regulatory burden issues can arise any time during the year as individual transactions and projects are discussed with FCA. The elimination of duplicative, ineffective and burdensome regulations needs to be on ongoing process to allow Farm Credit System institutions to operate their businesses successfully without unnecessary regulatory intervention.

Sincerely,

Robert B. Engel

Robert B. Engel
President and Chief Executive Officer